

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

PROFECTUS TECHNOLOGY LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

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CIVIL ACTION NO. 6:20-cv-00101-ADA

JURY TRIAL DEMANDED

**DEFENDANT GOOGLE LLC'S REPLY IN SUPPORT OF ITS MOTION FOR  
PARTIAL SUMMARY JUDGMENT OF LIMITED PRE-SUIT DAMAGES AND NO  
WILLFUL INFRINGEMENT**

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Profectus fails to raise a genuine dispute as to any material fact. The Court should, therefore, grant partial summary judgment of no pre-suit damages before March 8, 2019, and summary judgment of no willful infringement.

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The Federal Circuit recently reiterated that actual notice under § 287(a) requires notifying an accused infringer of the “activity that is believed to be an infringement.” *Lubby*, --- F. 4th at ---, 2021 WL 3889816, at \*4 (citation omitted). That is consistent with its precedent that “actual notice requires the affirmative communication of a specific charge of infringement by a specific accused product or device.” *Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 24 F.3d 178, 186 (Fed. Cir. 1994). [REDACTED]

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Profectus cannot meet its burdens to show evidence of willful infringement, which requires both that Google had (1) knowledge of the asserted patent, and (2) a specific intent to infringe, which is behavior that is “willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 987 (Fed. Cir. 2021) (quoting *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1932 (2016)).

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### **C. Conclusion**

The court should grant summary judgment that: (i) Profectus is not entitled to pre-suit damages for the period before March 8, 2019, and (ii) Profectus is not entitled to a finding of willful infringement.

Dated: September 16, 2021

Respectfully submitted,

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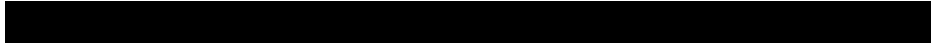
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**CERTIFICATE OF SERVICE**

Pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that, on September 16, 2021, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system.

Dated: September 16, 2021

/s/ Michael O'Donnell  
Michael O'Donnell